

Bill No. CS for SB 1460

Barcode 104818

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Joyner moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 702.55, Florida Statutes, is created to read:

702.55 Notice of bankruptcy alternative to judicial or sheriff's sale.--

(1) In any foreclosure of a mortgage lien or other lien against homestead property owned by a natural person or persons, the mortgagee or lienholder must serve a separate notice to the natural person property owner or owners containing the following statement in conspicuous type:

NOTICE OF PROPERTY SALE

If you are an individual owner of property that may be affected by this action, and if any portion of the property is your home or

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1           personal property, please read the following  
2           notice carefully: A judicial or sheriff's sale  
3           of your property that is subject to the lien of  
4           the plaintiff in this case may occur shortly.  
5           UNDER CERTAIN CIRCUMSTANCES, the United States  
6           Bankruptcy Code may provide a property owner  
7           the ability to retain the liened property and  
8           reorganize the claimed indebtedness if a  
9           bankruptcy petition is filed before the  
10           judicial or sheriff's sale occurs. In most  
11           cases, an individual will be required to  
12           complete a credit counseling briefing before  
13           being eligible to file a bankruptcy case.

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15           (2) The notice required by this section shall be  
16           served together with the original process and in the manner  
17           permitted for service of the complaint, and, if so served, the  
18           fact of service of the notice shall be noted on the summons  
19           and the return of service so that the clerk of the court and  
20           the judicial officer may ascertain whether the notice has been  
21           served. In the case of service of process by publication, the  
22           notice need not be separate if the published service of  
23           process includes the statement set forth in subsection (1),  
24           and such publication of the statement shall constitute  
25           compliance with this section. If the foreclosing mortgagee or  
26           lienholder fails to serve the notice required by this section  
27           with the original process or with the original publication of  
28           service of process, the mortgagee or lienholder may cure such  
29           failure by subsequently serving the notice in the manner  
30           specified in this subsection at any time up to 5 business days  
31           before the natural person property owner's answer is due to be

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1 served. The notice need not be served on any defendant other  
2 than the natural person or persons who are the record owner of  
3 the property at the time the notice of lis pendens is  
4 recorded.

5 (3) The failure of the mortgagee or lienholder to  
6 serve the notice required by this section shall constitute an  
7 affirmative defense available to a natural person property  
8 owner in an action to foreclose the mortgage or other lien  
9 against homestead property, and a natural person property  
10 owner who raises the defense shall have the burden of proving  
11 that the property is the homestead of such property owner. If  
12 the defense is timely raised and proved by the natural person  
13 property owner, an in personam or deficiency judgment may not  
14 be entered against such property owner, but an in rem final  
15 judgment of foreclosure may be entered against such property  
16 owner. If the affirmative defense is not timely raised and  
17 proved, the failure of a mortgagee or lienholder to timely  
18 serve the notice required by this section shall be no bar to  
19 the entry of an in personam or deficiency judgment.

20 (4) Failure to serve the notice required by this  
21 section shall not affect the validity or finality of the  
22 judgment of foreclosure, nor affect the title or marketability  
23 of the real property subject to the judicial sale, nor affect  
24 the validity of the title conveyed by the judicial sale.

25 Section 2. Section 56.021, Florida Statutes, is  
26 amended to read:

27 56.021 Executions; issuance and return, alias,  
28 etc.--When issued, an execution is valid and effective during  
29 the life of the judgment or decree on which it is issued.  
30 When fully paid, the officer executing it shall make his or  
31 her return and file it in the court which issued the

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1 execution. If the execution is lost or destroyed, the party  
 2 entitled thereto may have an alias, pluries or other copies on  
 3 making proof of such loss or destruction by affidavit and  
 4 filing it in the court issuing the execution. However, if the  
 5 judgment debtor or property owner is a natural person,  
 6 execution may not be issued before the judgment creditor has  
 7 filed and served a notice upon such judgment debtor or  
 8 property owner in the same form as required by s. 702.55.

9 Section 3. Section 702.035, Florida Statutes, is  
 10 amended to read:

11 702.035 Legal notice concerning foreclosure  
 12 proceedings.--Whenever a legal advertisement, publication, or  
 13 notice relating to a foreclosure proceeding is required to be  
 14 placed in a newspaper, it is the responsibility of the  
 15 petitioner or petitioner's attorney to place such  
 16 advertisement, publication, or notice. For counties with more  
 17 than 1 million total population as reflected in the 2000 most  
 18 ~~recent~~ Official Decennial Census of the United States Census  
 19 Bureau as shown on the official website of the United States  
 20 Census Bureau, any notice of publication required by this  
 21 section shall be deemed to have been published in accordance  
 22 with the law if the notice is published in a newspaper that  
 23 has been entered as a periodical matter at a post office in  
 24 the county in which the newspaper is published, is published a  
 25 minimum of 5 days a week, exclusive of legal holidays, and has  
 26 been in existence and published a minimum of 5 days a week,  
 27 exclusive of legal holidays, for 1 year or is a direct  
 28 successor to a newspaper that has been in existence for 1 year  
 29 that has been published a minimum of 5 days a week, exclusive  
 30 of legal holidays. The advertisement, publication, or notice  
 31 shall be placed directly by the attorney for the petitioner,

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1 by the petitioner if acting pro se, or by the clerk of the  
2 court. Only the actual costs charged by the newspaper for the  
3 advertisement, publication, or notice may be charged as costs  
4 in the action.

5 Section 4. This act shall take effect July 1, 2007,  
6 and shall apply only to foreclosure proceedings commenced, and  
7 to writs of execution issued, after that date.

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10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

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14 and insert:

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A bill to be entitled

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An act relating to judicial and execution sales

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of property; creating s. 702.55, F.S.;

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requiring that, before certain court-ordered

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sales of property, the lienholder serve notice

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on the property owner of the possibility of

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relief through the filing of a bankruptcy

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petition; specifying the content of the notice;

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providing for an affirmative defense for

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failing to provide notice; amending s. 56.021,

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F.S., relating to the required service of

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notice of potential relief through bankruptcy;

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conforming provisions to changes made by the

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act; amending s. 702.035, F.S.; clarifying that

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the number of days for publishing a notice

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relating to a foreclosure proceeding excludes

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legal holidays; providing an effective date.